

AMENDED IN ASSEMBLY MARCH 29, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2441

Introduced by Assembly Member Klehs

February 23, 2006

An act to add Section ~~6591.7~~ 6485.2 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2441, as amended, Klehs. Sales ~~tax reimbursement: penalty.~~
and use tax fraud.

The Sales and Use Tax Law imposes penalties for failure to file returns and for failure to remit the total taxes owed.

This bill would provide that any person who knowingly collects sales tax reimbursement or use tax, and who fails to timely remit that sales tax reimbursement or use tax to the State Board of Equalization, is liable for a penalty of 40% of the amount not timely remitted, except under certain circumstances.

~~The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property, and imposes a penalty for failure to pay any tax to the state or any amount of tax required to be collected and paid to the state.~~

~~This bill would, in the case of any person who collects any sales tax reimbursement and knowingly fails to timely remit that amount to the board, impose, except as provided, a penalty of 40% of the amount of sales tax reimbursement that is not timely remitted. This bill would relieve that penalty if the person certifies, under penalty of perjury, to~~

~~the board, in the form and manner prescribed by the board, that the failure was due to reasonable cause.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*.
State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 6485.2 is added to the Revenue and*
2 *Taxation Code, to read:*
3 6485.2. (a) (1) *Any person who knowingly collects sales tax*
4 *reimbursement, as defined in Section 1656.1 of the Civil Code, or*
5 *who knowingly collects use tax pursuant to Chapter 3*
6 *(commencing with Section 6201), and who fails to timely remit*
7 *that sales tax reimbursement or use tax to the board, shall be*
8 *liable for a penalty of 40 percent of the amount not timely*
9 *remitted.*
10 (2) *This subdivision shall not apply to either of the following:*
11 (A) *Any person whose liability for the unremitted sales tax*
12 *reimbursement or use tax described in paragraph (1) averages*
13 *one thousand dollars (\$1,000) or less per month or does not*
14 *exceed 5 percent of the total amount of tax liability for which the*
15 *sales tax reimbursement or use tax was collected for the period*
16 *in which the tax was due, whichever is greater.*
17 (B) *If a person's failure to make a timely remittance of sales*
18 *tax reimbursement or use tax is due to a reasonable cause or*
19 *circumstances beyond the person's control, and occurred*
20 *notwithstanding the exercise of ordinary care and the absence of*
21 *willful neglect, the person shall be relieved of the penalty*
22 *imposed by this subdivision.*
23 (b) *For purposes of this section, "reasonable cause or*
24 *circumstances beyond the person's control" includes, but is not*
25 *limited to, any of the following:*

1 (1) *The occurrence of a death or serious illness of the person*
2 *or the person's next of kin that caused the person's failure to*
3 *make a timely remittance.*

4 (2) *The occurrence of an emergency, as defined in Section*
5 *8558 of the Government Code that caused the person's failure to*
6 *make a timely remittance.*

7 (3) *A natural disaster or other catastrophe directly affecting*
8 *the business operations of the person that caused the person's*
9 *failure to make a timely remittance.*

10 (4) *The board failed to send returns or other information to*
11 *the correct address of record, that caused the person's failure to*
12 *make a timely remittance.*

13 (5) *The person's failure to make a timely remittance occurred*
14 *only once over a three-year period, or once during the period in*
15 *which the person was engaged in business, whichever time*
16 *period is shorter.*

17 (6) *The person voluntarily corrected errors in remitting sales*
18 *tax reimbursement or use tax collected that were made in*
19 *previous reporting periods and remitted payment of the liability*
20 *owed as a result of those errors during the period or periods in*
21 *which the errors occurred prior to being contacted by the board*
22 *regarding possible errors or discrepancies.*

23 ~~SECTION 1. Section 6591.7 is added to the Revenue and~~
24 ~~Taxation Code, to read:~~

25 ~~6591.7. (a) Any person who collects any sales tax~~
26 ~~reimbursement required to be collected and remitted to the board~~
27 ~~under this part, and who knowingly fails to timely remit that~~
28 ~~amount to the board, shall pay, in addition to any other penalty~~
29 ~~imposed by this part, a penalty of 40 percent of the amount of~~
30 ~~sales tax reimbursement that is not timely remitted.~~

31 ~~(b) No penalty shall be imposed by this section if either of the~~
32 ~~following applies:~~

33 ~~(1) The unremitted sales tax reimbursement averages one~~
34 ~~thousand dollars (\$1,000) or less per month, or does not exceed 5~~
35 ~~percent of the total amount of sales tax reimbursement collected~~
36 ~~for the period in which the tax was due.~~

37 ~~(2) The person certifies, under penalty of perjury, to the board,~~
38 ~~in the form and manner prescribed by the board, that the failure~~
39 ~~to remit was due to reasonable cause.~~

1 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the~~
6 ~~penalty for a crime or infraction, within the meaning of Section~~
7 ~~17556 of the Government Code, or changes the definition of a~~
8 ~~crime within the meaning of Section 6 of Article XIII B of the~~
9 ~~California Constitution.~~